

Bureau of Home Furnishings and Thermal Insulation

INITIAL STATEMENT OF REASONS

Hearing Dates: July 30, 2007 in North Highlands, CA and July 31, 2007 in Diamond Bar, CA.

Subject Matter of Proposed Regulations: Mattresses-Open-Flame Standard

Sections Affected:

The proposed regulations amend Section 1371 and its title, which are contained in Article 13 in Division 3 of Title 4 of the California Code of Regulations (CCR).

Specific Purpose and Factual Basis of each adoption, amendment, or repeal:

Amend Section 1371:

Purpose

The proposed amendments to Section 1371 would clarify the requirements for fire retardant mattresses and mattress sets in California and clarify the requirements for manufacturers and importers under the Act, consistent with the standards adopted by the Consumer Product Safety Commission at 16 CFR 1633 and following ("CPSC standard") as required by Senate Bill (SB) 1849, Statutes of 2006, Chapter 760.

Specifically, the proposed regulations would:

- repeal, as of July 1, 2007, existing language in the title, and at subdivisions (a)-(i) pertaining to Technical Bulletin 603 (TB 603), 16 CFR 1632 (smolder-resistance standard), and the definition pertaining to the "transient lodging" exemption at existing Section 19161(b) of the Business and Professions Code;
- clarify that mattresses and mattress sets must meet the labeling as well as open-flame resistance requirements of the CPSC standard;
- clarify that manufacturers and importers subject to the CPSC standard must meet all applicable requirements of that standard, including records requirements at 16 CFR 1633.11;
- specify the "one-of-a-kind" mattress set exemption contained in 16 CFR 1633.1;
- adopt new definitions for "mattress" and "mattress set" referenced in the CPSC standard;
- clarify that failure to comply with the CPSC standards referenced in proposed subdivisions (a) and (b) is grounds for discipline under the Act.

Factual Basis

The Bureau of Home Furnishings and Thermal Insulation (bureau) enforces the provisions of the Home Furnishings and Thermal Insulation Act ("Act" -- Business and Professions Code sections 19000 and following), including standards at Section 19161 of the Business and Professions Code requiring mattresses manufactured for sale in this state to be "fire retardant."

The bureau first adopted flammability regulations, including Section 1371, in the early 1970's. In 2001, amendments to Section 19161 of the Business and Professions Code were enacted to require the bureau to adopt regulations requiring fire retardant mattresses and mattress sets to meet a resistance to an open-flame test developed by the bureau by January 1, 2004 (Assembly Bill (AB) 603; Stats.2001, ch. 199). The bureau adopted new regulations in Title 4, CCR section 1371 to implement the new open-flame standards, which became known as "Technical Bulletin 603" or "TB 603". However, existing law specifies that these regulations "become inoperative upon the effective date of any federal law or regulation establishing an open-flame resistance standard for these products."

On February 16, 2006, the Consumer Products Safety Commission (CPSC), a federal agency, adopted regulations at Part 1633 of Title 16 of the Code of Federal Regulations (CFR), establishing an open-flame resistance standard for mattresses and mattress sets, that will become effective July 1, 2007. In response to this development, effective July 1, 2007, under the provisions of newly amended Section 19161 (Stats.2006, ch. 760; SB 1849), all mattresses and mattress sets manufactured for sale in California must meet the resistance to open-flame test adopted by the CPSC.

These regulations are necessary to implement SB 1849 to repeal existing regulations relating to standards that will become inoperative on July 1, 2007, and to adopt new regulations implementing the CPSC standard on July 1, 2007. These regulations are necessary to clarify that mattresses and mattress sets need to also meet the flammability labeling requirements of the CPSC to be considered "flame retardant" and that manufacturers and importers need to meet all requirements of the CPSC standard, including the records requirements, to comply with the Act.

Underlying Data

- (1) Consumer Product Safety Commission, "16 CFR Part 1633, Standard for the Flammability (Open Flame) of Mattress Sets; Final Rule," Vol. 71, No. 50 Federal Register, Rules and Regulations (March 15, 2006).
- (2) SB 1849 (Statutes of 2006, Chapter 760).

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Bureau has approximately 5,000 licensed Manufacturers and Importers. This proposal would increase their record keeping requirements. On average, the Bureau conducts 150 mattress manufactures/importers inspections per year. The Bureau anticipates 5% or eight businesses/individuals may be impacted/ in violation of the record keeping requirements and 90% of the total businesses/individuals impacted would be small businesses.

Specific Technologies or Equipment

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

On February 16, 2006, the Consumer Products Safety Commission (CPSC), a federal agency, adopted regulations at Part 1633 of Title 16 of the Code of Federal Regulations (CFR), establishing an open-flame resistance standard for mattresses and mattress sets, that will become a national standard effective July 1, 2007. Effective July 1, 2007, Section 19161 of the Business and Professions Code mandates that the bureau enforce the CPSC standard. As a result, all prescriptive standards, technologies or equipment will already be a federal mandate for manufacturers when these regulations become effective.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.